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January 30.2004

Jennifer J. **Johnson, Secretary**
Board of Governors of **the** Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

RE: *Regulation* **Z - *Proposed Rule,*** *Dockef # R-1167*
Regulation B – Proposed Rule, Docket # R-1168
*Regulation E – **Proposed** Rule, Docket # R-1769*
*Regulation M – **Proposed** Rule, **Docket** # R-1170*
*Regulafion DD – Proposed Rule, **Docket # R-1171***

Dear **Ms.** Johnson:

Thank you for the opportunity to **comment** on the proposed changes to Regulations Z **and** B (the "Proposed Rules") of the Board of Governors *of* the Federal Reserve **System (the** "Board"), implementing the Truth **in** Lending **Act** ("TILA") and the **Equal** Credit Opportunity Act ("ECOA"). **Household Mortgage** Services **("HMS")** respectfully provides comments to the Proposed **Rules.**

HMS **primarily** purchases **closed real** estate **secured loans** on the secondary market. These **loans are** both first and second lien position **mortgage** loans. **HMS** originates a small number **of** real estate loans to its own customers to fulfill customer **needs.** HMS **also perform** loan **servicing functions** for the loans **it purchases** and **for** loans **that** it sells or securitizes. The **servicing** portfolio **is** approximately $24 billion representing over 300,000 customers. Therefore, the proposed changes **will** both affect the HMS business, **as** well as **the** business of all parties from which **it purchases** loans.

Background:

The Board **is proposing** to amend the **regulations** cited above to provide a uniform definition *of* the term "clear and **conspicuous"** among the Board's regulations generally. **Specifically,** the Board **is proposing** incorporating into **these existing** rules the relatively new "clear and conspicuous" standard from

Regulation P, which implements the privacy disclosure requirements of the Gramm-Leach-Bliley Act. The stated intention of this revision is to "help ensure that consumers receive noticeable and understandable infomation that is required by law in connection with obtaining consumer financial products and services." In addition, the preamble expresses the belief that "consistency among the regulations should facilitate compliance by institutions."

HMS fully supports ongoing industry and regulatory efforts to provide useable, clear information *to* consumers regarding financial products. However, we fear that the changes contained in the Proposed Rules may fail to advance these shared goals. Moreover, because these changes could mandate the revision of virtually every document, advertisement, or page on a financial institution's website that are sent or used by consumers, the costs to the industry are potentially enormous, and should well exceed the Board's estimate under the Paperwork Reduction Act that "the revisions would not increase the paperwork burden of creditors." These compliance costs are compounded by the potential litigation exposure that could result from the elimination of decades of jurisprudence concerning disclosure standards under the Board's affected regulations. While costs alone may not constitute sufficient reason to withdraw a proposal that is intended to enhance consumer protection. we are also concerned that the Proposal lacks documentation or other explanatory information that demonstrates how the new standard will meet those intentions, or how it will facilitate compliance by affected financial institutions. In this regard, and as further discussed below, we respectfully disagree with the assertion that the standard expressed in Regulation P "articulates with greater precision" the duty to provide disclosures that consumers will notice and understand. With these comments in mind, we suggest that the Proposal be withdrawn in its entirety, and that any specific regulatory concerns regarding consumer disclosures be addressed on a case by *case* basis, as the Board has done in the past.[1]

Discussion:

Initially, in its notice of rulemaking, the Board states that the application of the "clear and conspicuous" definition in Regulation P to the disclosures required by Regulations B, E, M, Z and DD will provide "consistent guidance." However, due to the major differences in history between Regulation P and the other Regulations, MMS submits that this change is inappropriate.

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[1] See, e.g., *65* Fed. Reg. 58, 903 (October 3, 2000) (Final Rule implementing changes to Regulation Z's definition of "clear and conspicuous" as it applies to information in the Schumer Box.)

Regulation P implements the privacy provisions of the Gramm-Leach-Bliley Act. The "clear and conspicuous" definition that the Board devised for that Regulation applies to only one consumer disclosure, a privacy notice with a singular purpose and intent, The definition was written specifically for that notice, with no existing case law, common usage or regulatory interpretation providing guidance on its meaning. In other words, the regulatory guidance was provided on a clean slate. Also of particular note is that Regulation P contains no private right of action.

In contrast to Regulation P, Regulations Z and B to which the Board is proposing to apply the Regulation P "clear and conspicuous" standard are well established with a body of accepted case law, common usage and regulatory interpretation. Moreover, unlike Regulation P, each of these other Regulations mandates numerous disclosures, not just one. Thus, to apply the Regulation P "clear and conspicuous" standards to all of these Regulations and to all of the disclosures that they mandate would result in the eradication of all of the existing guidance that has been provided by courts, commentators and regulators. In the case of Regulation Z, the existing guidance stretches back over 30 years.

The application of the Regulation P standard to Regulation Z in particular, creates a level of uncertainty in how to comply. As the Commentary describes, the "clear and conspicuous" definition contains two standards of its own. The two standards contained in the definition of "clear and conspicuous" do not provide lenders with a roadmap for compliance but rather provide confusion. The first standard of "reasonably understandable" is discussed in the Commentary to Section 226.2(a)(27)(1). In this section, six examples of methods to be employed are provided in order to meet this standard. Although we do not believe that the Board intended this consequence, the use of the connector "and" between the fifth example and the six example could imply that all six examples must be employed in order to comply with the Commentary. Assuming that each example provided may be utilized independently, creditors would be forced to pass each disclosure through a comparison against each example in order to attempt to comply with Commentary. The Commentary uses words like "precise", "concise" or "imprecise" to guide creditors in crafting understandable disclosures. Unfortunately, reasonable minds can differ in their interpretation and ultimate use of such language. We feel that this type of terminology used in the Commentary is too subjective to be considered a standard by which creditors should be judged and is not likely to cause consumers to become better informed.

The second standard described in the Commentary is the "designed to call attention" standard. While HMS believes that this is a worthwhile goal, the application of this standard is not likely to achieve the goal. First, the creditor will have to decide in its best judgement which portions of disclosures should be enhanced with the tools provided in the Commentary. These recommended

tools include using "plain-language headings", larger font size, wider margins and "boldface" lettering. Further, even in those instances where the creditor has selected the "right" disclosure language to enhance with these tools, the next challenge is selecting the "right" tool to accomplish the enhancing. In the exercise of sound judgement, Creditors may err on the side of enhancing more disclosure language in the hopes *of* not leaving any arguably important disclosure language unmodified. However, in this instance where the creditor in good faith selects too much of any given disclosure to be highlighted, this would result in the actual highlighting of nothing at all. When the bar is raised on the "conspicuousness" of all important disclosure language the end result would be that nothing stands out.

Another consequence of requiring creditors to identify those disclosure sections to highlight will be that different creditors acting reasonably and in good faith may differ in the selection of the disclosure sections to highlight. In this instance, borrower confusion is created. The borrowing public will not be presented with any consistency in disclosures used and therefore, may *not* be cognizant *of* which disclosures hold more importance than others. For example, the Schumer Box has gained universal customer recognition because it is used by all creditors in the same manner. This will not be the case for all other disclosures if the definition of "clear and conspicuous" is adopted as written.

Integrating the examples provided in the Commentary relating to the "designed to call attention" standard would result in significant cost expenditures and the use *of* otherwise allocated resources to comply. The value *of* those internal business resources necessary to evaluate and enhance the Regulation Z disclosures alone is immeasurable. Other projects and priorities, some of which would be compliance related, will have to be used in order to meet the "clear and conspicuous" mandates.

Even still, where HMS and other creditors dedicate the required internal resources, incur the capital expenditure and endeavor in good faith using best efforts to comply with the proposed definition of "clear and conspicuous", there is no assurance that its efforts will result in more "noticeable" or "understandable" consumer disclosures. Alternatively, because these regulations allow for private rights of action and because there is no proposed safe harbor, the likely result is more litigation and inconsistent regulatory examination treatment.

Paperwork Reduction Act

In this section of the Proposals, the Board estimates that the proposed definitional changes will create no annual cost burden on the banks affected by

the changes. We respectfully disagree. As written, the new language effectively includes minimum typeface sizes, increased margins, and other requirements that would likely lengthen every printed disclosure made *to* consumers. Added length requires added paper at an additional *cost,* Additional paper creates additional weight, which requires additional postage. It is quite possible, therefore, that *the* proposed changes could result in costs to the industry measuring in the billions of dollars.

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We appreciate the opportunity to comment on this proposal.

Sincerely,

Judd A. Levy
Associate General Counsel
Household Mortgage Services